IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 813 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ? **1 & 2 YES; 3 to 5 NO**

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MANHARLAL C PATEL - Applicant(s)
Versus
JAYANTILAL TULSIDAS THAKKAR & 5 - Respondent(s)

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Appearance :
MR NALIN K THAKKER for Applicant(s) : 1,
MR DK MODI for Respondent(s) : 1 - 5.
MR MD MODI for Respondent(s) : 1 - 5.
MS MS PANCHAL ADDL PUBLIC PROSECUTOR for Respondent(s) : 6,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 18/06/2007

ORAL JUDGMENT:

1. Invoking Article 226 of the Constitution, petitioner-Food Inspector, the original

complainant, has prayed to quash the orders dated 25.8.1999 and 10.7.2000 of learned Chief Judicial Magistrate, Bhuj, Kutch in Criminal Case No.1103 of 1999. One of the accused persons in the original criminal case, respondent No.1 herein, filed an application for sending the sample to Central Food Laboratory under the provisions of sub-section (2) of section 13 of the Prevention of Food Adulteration Act, 1954 (for short, "the Act") and that application was granted, subject to payment of cost, by the first order dated 25.8.1999. Assistant Commissioner of Food and Drug Control Administration then filed an application on 4.9.1999 to submit that the sample which was ordered to be sent for analysis by Central Food Laboratory was not in a fit state for analysis and not reported to be "adulterated" but it was, by earlier analysis, only declared to be "misbranded" and hence, the order was required to be suitably modified. After keeping that application for hearing, the learned Judge made the second order dated 10.7.2000 holding that, since the earlier application under section 13 (2) of the Act was allowed by his predecessor in office, the application was not maintainable.

2. Being aggrieved by the above orders, the petitioner has approached this court and, even

though no injunction was ever granted, the criminal case is stated to be pending at the same stage since last seven years. It was argued by learned counsel for the petitioner that provisions of sub-section (2) of section 13 of the Act did not apply in the case of misbranded articles of food and hence the impugned order dated 25.8.1999 was illegal and without jurisdiction. Learned A.P.P. supported that submission after relying upon a recent judgment of this court in ***Purushottambhai Mulajibhai Hadiyal vs. State of Gujarat reported in 2006 (3) G.L.H. 719*** wherein it was held that, when a sample was not found to be "adulterated", there would be no report of analysis declaring the sample to be "adulterated" and no question of any breach by which prejudice could be caused to the accused by non-supply of report of analysis could arise.

3. Similarly, learned counsel for the respondent, one of the original accused, relied upon the judgments which have no bearing on the issue raised in the present petition. Mr.D.K.Modi, learned advocate for the petitioner, relied upon judgment of Gauhati High Court in ***Mohan Chandra Deka v. State of Assam [2005 (2) FAC 91]*** wherein, even in case of the report that

sample was "misbranded", relying upon ***State of Orissa v. Gouranga Sahu [2002 FAJ 490]***, it was held that compliance of section 13 (2) would not be treated complete unless the prosecution discharged its additional obligation of proving, by adducing cogent evidence, that the notice issued under section 13 (2) had been served. In the facts of ***Gourang Sahu*** (supra), the report of public analyst was to the effect that the food article was "adulterated" and the observations on legal aspect were made by the Supreme Court on that basis. Mr.Modi relied upon judgment of Bombay High Court in ***Syed Shaker Ali v. State of Maharashtra [2006 (5) AIR Bom.R.821]*** to submit that, in the facts of that case, conviction was for selling misbranded sunflower oil. After referring to the provisions of section 13 of the Act and judgment of the Supreme Court in **Gourang Sahu** (supra), it was held that compliance of section 13 (2) of the Act was mandatory. The court upheld the contentions of the petitioner that violation of section 13 (2) of the Act had resulted in causing prejudice to the petitioner insofar as his valuable right of getting sample analysed through Central Food Laboratory was lost. However, admittedly, the issue of applicability of the provisions of section 13 (2) to the cases of "misbranded" sample was neither raised nor resolved by any court in any of the

aforesaid cases. It was also fairly conceded by learned counsel Mr.Modi that provisions similar or parallel to the provisions of section 13 (2) for the cases in which article of food was found and reported upon analysis to be "misbranded" were nowhere to be found in the Act.

4. On plain reading of the provisions of section 13, it clearly appears that sub-section (1) provides for delivery of a report to the local health authority by the public analyst of the result of analysis of any article of food submitted to him for analysis. For operation of the provisions of sub-section (2), the first condition appears to be that the report of result of analysis, received under sub-section (1), has to be to the effect that the article of food was "adulterated" and then only the subsequent obligation of forwarding copy of the report and informing the party concerned about their right to make an application to the court to get sample of the article of food analysed by Central Food Laboratory could arise. In that view of the scheme of section 13, mandatory provisions of sub-section (2) or sub-sections (2-A) or (2-B) apply only in cases where report of the result of analysis is that the article of food was "adulterated"; but those provisions do not apply

in cases of the article found and reported to be "misbranded".

5. Therefore, in the facts and for the reasons discussed hereinabove, the original application made by original accused person No.1 appears to be misconceived and made under a provision which did not apply in the facts of the case. No other provision or reason was cited on behalf of the accused person for granting that application dated 25.8.1999. Therefore, the impugned order dated 25.8.1999 is required to be set aside for being devoid of any legal basis and the subsequent order dated 10.7.2000 would not survive. Accordingly, the petition is allowed and the impugned orders are set aside. Rule is made absolute with no order as to costs.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)